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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-first session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 1999, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

- Third periodic report of Bulgaria (continued) (E/1994/104/Add.16; HRI/CORE/1/Add.81; E/C.12/A/BUL/1; E/C.12/Q/BUL/1; written replies of the Bulgarian Government (document without a symbol))

1. The Chairperson invited the members of the Bulgarian delegation to resume their places at the Committee table and to reply to the questions put at the end of the preceding meeting on articles 6, 7, 8 and 9 of the Covenant.

2. Mr. DRAGANOV (Bulgaria) said that, under article 5, paragraph 4, of the Bulgarian Constitution, international instruments which had been ratified, promulgated and published in the Official journal became an integral part of domestic law and took precedence over national legislation. Furthermore, the Bulgarian Government's written replies contained some examples of cases in which the provisions of the Covenant had been invoked before the courts while there were not many such cases, the public was becoming increasingly aware of its right to invoke the Covenant directly, particularly through the work of NGOs. Awareness raising was also taking place among members of the legal profession. A special training centre for judges had been set up in 1997.

3. Mr. RIEDEL said that he would like some details of the actual implementation of the provisions of the Covenant and asked whether persons invoking the Covenant had received judgements in their favour and whether the decisions handed down had been regarded as forming case law.

4. Mrs. JIMÉNEZ BUTRAGUEÑO welcomed the establishment of a training centre for judges and asked the delegation for more information about it.

5. Mrs. SREDKOVA (Bulgaria) said that the judgements handed down on the basis of the Covenant, the first of which dated back to 1993, had been enacted. The small number of such judgements was explainable by a lack of knowledge about international instruments, which was why a new subject entitled "International labour and social law" was now being taught at the Sofia Faculty of Law. In 1996 and 1997, a two-year post-graduate training course had been organized for the staff of the labour inspectorate. In that field, Bulgaria was also working on a draft amendment of the Labour Code based on the Covenant and to providing mechanism for settling disputes between employers and workers. The special training centre for judges had so far organized two training sessions on the protection of human rights and its two main objectives were specialized training for newly appointed judges (during their first three years in office) and the training of judges at all levels.

6. Mr. DRAGANOV (Bulgaria), referring to Mr. Riedel's question on the draft Optional Protocol, said that he had contacted his Government to obtaining its most recent thinking on Bulgaria's reservations to the draft Optional Protocol. He hoped to be able to give the Committee the results of his inquiry at the next meeting.

7. On the question of social welfare, he said that he could not give precise statistics for the number of Roma who benefitted because allowances were paid on the basis of socio-economic, not ethnic, criteria. From information collected during national censuses, the impression was that the Roma population constituted the largest group of beneficiaries of social assistance, which in full suggested that the view of the Committee on the Elimination of Racial Discrimination that the Roma faced difficulties in receiving their social assistance was incorrect. Further explanations in that connection would be found in paragraph 4.4 of the written replies. There was no question of interruption, but only delay in, the payment of local community assistance

8. As to the institutions responsible for protecting human rights, he drew attention to paragraph 4.7 of the written replies and, in particular, to the establishment of a special working group on Roma issues. As in all countries, such institutions were in need of support. Accordingly, work was being done on special training for their staff. Studies had also been carried out to determine the advisability of setting up an ombudsman type of structure in Bulgaria. Refugee status was granted by the Agency for Refugees, a body that had ministerial rank. According to the regulations in force, persons requesting asylum in Bulgaria could be detained at the airport for 24 hours before being sent to a transit centre. There were also emergency centres, where, in special cases, refugees status could be granted in 72 hours. Turning to the question of education for nomads, he said that, as far as the authorities knew, there were practically no nomads in Bulgarian territory. There was only one community of about 200 itinerant herdsmen on the Greek frontier, and the education of children of that community did not give rise to problems.

9. Mrs. SREDKOVA (Bulgaria) said that women had the same access to education as men and were well represented in the educational system at all levels, including higher education. However, they were more affected by unemployment. The National Employment Agency had not devised specific programmes for women, but they could obviously benefit from the various existing programmes for people in difficulty. For example, since 1994, the Agency had been running a literary and vocational training programme for people of mixed ethnic origin, young persons and women. Also since 1994, there had been a programme entitled "From social care to employment", which was intended for disadvantaged groups such as very low income people or single mothers and from which some 4,500 persons had benefited in 1997. A national programme had also been established to deal with youth unemployment, under which young men and women could receive vocational training or advice on choosing a career or setting up a small business.

10. The 1997 Unemployment Protection and Employment Promotion Act provided financial inducements for employers to hire the disadvantaged, in particular young people under 28, the handicapped and the long-term unemployed. So far, those measures had found jobs for 3,781 people.

11. With regard to protection for mothers, she drew attention to paragraphs 136 to 144 of the third periodic report, adding that the Labour Code contained provisions whereby an employer could provide vocational training for a woman returning from maternity leave, with a view to bringing her skills up to date and restoring her to her previous job. Parental leave could be taken by either the mother or the father - although cases where the father did so were relatively rare or even by one of the grandparents - which was the most usual case. Turning to discrimination in the workplace, she denied the allegation

that a large number of Roma were victims of dismissal. Not only the Roma, but all Bulgarians were affected by the difficult employment situation, attributable to the national restructuring process and the structural changes taking place in enterprises. The Roma were particularly exposed to the risk of dismissal not because of their ethnic origin, but simply because of their low level of skills and education.

12. Discrimination at work, on whatever grounds, was prohibited in Bulgaria. According to the Labour Inspectorate, there had been some cases of indirect discrimination, based, inter alia, on ethnic origin or sex, but employers found guilty of that type of abuse had been duly penalized by the Labour Inspectorate.

13. The right to strike was guaranteed by article 50 of the Bulgarian Constitution and was the prerogative not of trade unions, but of workers, who took their decision by simple majority. Workers and employees in certain sectors, such as health, the production, distribution and supply of electricity and the system of justice, were not entitled to go on strike. Certain articles of the Labour Code had been amended with a view to encouraging the use of means other than striking - such as direct negotiations between the parties, mediation and arbitration - to settle collective labour conflicts. The National Agency for Employment Mediation had been set up in 1998 for that purpose.

14. Only one institution was competent to decide whether a strike was political or not: the district court. According to the law, any strike was lawful unless otherwise decided by the competent court. The employer, non-striking employees and the State could dispute the lawfulness of a strike. The district court then took up the matter and was required to hand down a decision in open court within 14 days of the start of the proceedings. In practice, some strikes had been found unlawful, but many more decisions had recognized their lawfulness.

15. In reply to Mr. Wimer's question, she said that article 12 of the Bulgarian Constitution provided, inter alia, that citizens' associations, including trade unions, must not pursue political objectives or conduct any activities connected with political parties. By political activity, the legislator had meant any activity connected with organizing and conducting elections.

16. In reply to the questions of several members of the Committee about the minimum wage, she referred to paragraphs 45 et seq. of the third periodic report of Bulgaria, where the relevant mechanism was described in detail. She reminded the Committee that the minimum wage was fixed during tripartite bargaining involving representatives of the State, employers and the most representative trade unions. It was true that the minimum wage was very low in Bulgaria, but the country's economic situation made it impossible to raise it for the time being. The minimum wage was, however, two or three times higher in some economic sectors such as banking and electricity.

17. The unemployment benefit system was contributory. Any employee who had worked for 6 out of the past 15 months was entitled to a benefit equivalent to 80 per cent of the salary earned during the period of work, but not less than 90 per cent of the minimum wage. The length of entitlement varied according to length of service, from 4 months for those with less than 10 years' service to one year for those with more than 20 years' service. Three additional groups -

part time workers, people on training or rehabilitation courses and unemployed people who had been seeking work for over one year - were entitled to six months of benefit; recipients then had to wait a further year before they could claim again.

18. There were two reasons for the significant rise in the number of unemployment benefit claimants over the past few years. Firstly, until 1997, unemployed graduates of higher or secondary educational institutions had also been entitled to claim unemployment benefits, but that was no longer the case. Secondly, the number of long-term unemployed had risen, while the number of available jobs had fallen steadily.

19. Mr. GRISSA noted that the head of the Bulgarian delegation had denied the existence of any discrimination in Bulgaria, while recognizing that certain State services classified certain people according to ethnic origin. Experience had shown that, as soon as officials were permitted to classify people according to ethnic or linguistic origin, discrimination became possible. Many countries had therefore stopped drawing distinctions on the basis of race, colour, ethnic origin or religious background.

20. He also wondered how the Bulgarian authorities could state, both in their written report and in their presentation, that there was a national minimum wage if no single minimum wage existed.

21. Mr. HUNT noted that no reply had yet been received to the question whether Bulgaria genuinely had a national institution responsible for promoting and defending human rights, in the sense of a national commission set up in compliance with the "Paris Principles". Bulgaria did not yet appear to have an institution of that kind. In that case, perhaps it could envisage establishing such a structure and making it responsible for ensuring that economic, social and cultural rights were respected. In that connection, the delegation's attention should be drawn to the fact that the Office of the High Commissioner for Human Rights had a very elaborate programme precisely for the purpose of helping States wishing to create such institutions.

22. Mr. TEXIER said that, in his view, the delegation's replies to the questions about refugees were quite full, but emphasized that the Office of the United Nations High Commissioner for Refugees remained uneasy about the procedure followed by Bulgaria in that regard. Any asylum-seeker should be able to be heard by a competent service, which should consider the application on the basis of specific facts, not of prejudices about the seriousness or otherwise of the situation in the asylum-seeker's country of origin. There should be an appeals procedure for rejected applications.

23. In connection with article 8 of the Covenant concerning freedom of association, the Bulgarian delegation had recognized that articles 11 and 16 of the Law on the Settlement of Collective Labour Disputes limited the right to strike. Clearly, there remained some contradictions between those articles and their interpretation by the ILO Committee on the Application of Standards. The delegation had mentioned the Bulgarian Supreme Court's ruling that those limitations on the rights to strike were constitutional. However, Bulgaria had ratified the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87), which normally took precedence over domestic legislation.

24. He also noted that the delegation had said that certain unemployed people received unemployment benefits for six months of their first year of unemployment and then had to wait one year before they were able to draw unemployment benefits again. What happened during that year? What did they live on in the meantime? Was there really a minimum income established for those whose income was lower than the minimum set by law?

25. Mr. ANTANOVICH said that the purpose of the minimum wage was to provide the worker and his family with a decent living. That was why the minimum wage represented a important human rights instrument. If the minimum wage was too low to guarantee a decent living, it ceased to be a human rights instrument and became a simple economic indicator. The delegation had said that some private enterprises could pay up to twice the national minimum wage, but perhaps even that was not enough. Could it be said in that case that, in the present circumstances, the Bulgarian State was not in a position to guarantee a sufficient minimum wage to provide its citizens with a decent living?

26. Mr. THAPALIA said that, according to information published recently in the *International Herald Tribune*, many people aged over 30 were unemployed in Bulgaria because all job offers were directed at those aged under 30. Could people over 30 apply to a court on the grounds of violation of the right to work? Were training programmes envisaged for those over 30?

27. Ms. JIMÉNEZ BUTRAGUEÑO noted that social assistance and vocational integration programmes did not appear to be provided for elderly people in Bulgaria. What did they live on? Did they at least receive social assistance? She would also like an answer to her question about the training of judges.

28. Mr. SADI asked what percentage of the national budget was spent on social assistance and welfare benefits and whether or not that State assistance was a priority for the Bulgarian authorities.

29. Ms. SREDKOVA (Bulgaria) said that there was a national minimum wage in force throughout Bulgaria, but that the social partners in each economic sector had the option of setting a minimum wage higher than the national one.

30. Bulgaria did not yet have a national institution responsible for human rights. The Government would take due account of the Committee's recommendations in that regard.

31. Regarding the right to strike, the Bulgarian Constitutional Court had ruled that there was no contradiction between the provisions of articles 11 and 16 of the Law on the Settlement of Collective Labour disputes and those of the ILO Right to Organize and Collective Bargaining Convention, No. 98. That convention did not specify how decisions concerning the organization of a strike were to be taken. However, during the debate on the amendment of the law in question, trade unions right to propose the reduction or elimination of the restrictions on the right to strike laid down by that law for certain sectors.

32. Unemployed people who had used up their entitlement could receive assistance if they fulfilled the conditions laid down by the law on social assistance, particularly as concerned income and savings.

33. It had to be recognized that the minimum wage could not guarantee an adequate standard of living. Unfortunately, it was not possible to raise it, as that would endanger the transition towards a market economy.

34. Discrimination in hiring workers, particularly on the basis of age, occurred in isolated cases. The victims needed to be encouraged to apply to the Labour Inspectorate or the courts and reminded that those procedures were free of charge.

35. The CHAIRPERSON invited the Bulgarian delegation to refer to the implementation of articles 10, 11 and 12 of the Covenant.

36. Mr. DRAGANOV (Bulgaria) said, in population censuses, every individual was totally free to choose which category he wished to be classified in, such as "Roma" or "of Bulgarian origin".

37. The right to social insurance and welfare was guaranteed by article 51 of the Constitution. The social insurance system had been in the process of being overhauled for several years in order, inter alia, to extend protection. A new national health insurance system was being implemented gradually. The new institutions had tripartite management. Various laws had been passed on social insurance, health insurance, unemployment protection and safety at work and a code on compulsory social insurance had been approved on first reading in the National Assembly.

38. Concerning the protection of children, mothers and the family, the National Assembly had adopted a draft act on the protection of children on first reading and a new draft of the Family Code was being drawn up.

39. The right to an adequate standard of living was currently the most difficult requirement to implement because of the country's economic difficulties. The right to health insurance and medical care was guaranteed by article 52 of the Constitution. Free public health services were gradually being replaced by a new system of contributory health insurance, which was expected to be fully operational by the end of 2001. The problems encountered in implementing the new system were described in detail in the report and the written replies.

40. Important events which had occurred since the written replies had been submitted included the adoption of the law on combatting drug abuse and the law on medical institutions, the finalization of the work plan for the prevention of HIV and AIDS and the implementation of the first stage of the joint Ministry of Health/UNDP programme on HIV and AIDS.

41. Mr. HUNT said that he would like details of legislative and other measures taken by the Government to prevent and combat violence against women.

42. Mr. ANTANOVICH noted from the written replies (para. 26.3(a)(ii)) that the maximum stay in an orphanage was six months. He asked what happened to children after that period.

43. He also requested details of study grants provided by the State to children from disadvantaged backgrounds and of the protection and assistance

which should, under article 10 of the Covenant, be accorded to the family, and particularly to families with handicapped or chronically ill children.

44. Mr. SADI asked whether the standard of living of the general public and the level of protection of the family, mothers and children in particular had risen since Bulgaria had begun moving towards a market economy.

45. Mr. TEXIER said that he believed that an employer in Bulgaria could dismiss a pregnant woman by obtaining the authorization of the Labour Inspectorate. In his opinion, there should be no exceptions to the prohibition on dismissing pregnant women.

46. Concerning the right to an adequate standard of living, it would be interesting to know whether the impoverishment of the Bulgarian people, which was, as the table on page 49 of the report showed, a matter of great concern, was still continuing and to what extent privatization was responsible for that development.

47. In that connection, it was stated in paragraph 216 of the report that the system of housing distribution was being replaced by a market-based system. What measures was the Government planning to take to ensure that the most vulnerable sectors of the population still had access to housing? He would like to know how the Government intended to reconcile privatization, on the one hand, with the right to housing and adequate food, on the other.

48. Mr. GRISSA asked whether Bulgaria, like most countries in transition, had street children, and if so, what measures were being taken to deal with the problem.

49. Paragraph 151 of the report stated that, since child labour was prohibited in Bulgaria, the question did not need any consideration and paragraph 152 stated that the number of children employed within their families, households, farms or stores owned by their parents could not be assessed. It would thus be useful to have details of child labour. It was well known that, when the economic situation deteriorated, parents sometimes put their children to work as a means of boosting the family's income.

50. Mr. RATTRAY asked what specific measures were being taken by the government to comply with its obligations under the Covenant, particularly with regard to the right to housing and adequate food. In that connection, it was worrying to read in the report that State assistance to construction was now simply symbolic (para. 216) and that the State subsidy for housing had all but disappeared (para. 223).

51. Mr. RIEDEL asked what specific measures were being taken to ensure that the right to housing, adequate food and health could be exercised. In that connection, the Bulgarian Government had admitted with commendable frankness in paragraph 36.1 of its written replies that medical care was becoming more and more inaccessible for the most vulnerable groups, meaning the disabled, the retired, the unemployed and people on low incomes. The Government also admitted in paragraph 233 of the report that the physical and mental health of the Bulgarian people showed a number of unfavourable tendencies (a rise in the death rate and infant mortality rate and lower life expectancy). Under article 12 of

the Covenant, States parties recognized every person's right to the enjoyment of the highest attainable standard of physical and mental health.

52. Moreover, the alternative report by the Bulgarian Gender Research Foundation stated that implementation of the health insurance system and the restructuring and privatization of medical institutions had been postponed to July 2000 and that, in the meantime, health services would continue to deteriorate and the shortage of medicines and medical equipment would become worse.

53. It would be interesting to know how the Government proposed to remedy overcrowding and the lack of resources and staff in psychiatric institutions.

54. Mr. CEASU said that he would like to quote some figures which deserved consideration. According to the information provided in the written replies, the proportion of households with an income below the minimum subsistence level had reached 54 per cent and the percentage with an income below the social minimum had risen 41 per cent in 1990 to 73 per cent in 1996. The ratio of the income of the richest 20 per cent to that of the poorest 20 per cent had been 3.5 in the period 1980-1992 and 5.8 in 1996. That meant that the majority of the population was getting poorer while a small group was enjoying a considerable rise in income. It would be interesting to try to find a coherent explanation for that phenomenon, which was common in the countries in transition, and to know also whether there was a fair mechanism for negotiating and fixing the minimum wage.

55. In its written reply to question 27 of the list of issues, the Bulgarian Government limited itself to stating that the draft acts concerning protection of the rights of the child had not yet been adopted by the National Assembly. Was that because of the National Assembly had not yet begun consideration of the draft acts, because the Government had withdrawn the drafts or because they had been rejected. Also, Bulgaria was introducing a new health insurance system which would enter into force on 1 January 2000. Retired people's medical expenses would be paid by the State, but what would be the position of students? Would they be given free health insurance or would there be a special system for them?

56. Several paragraphs of the report were devoted to programmes in the field of health and nutrition, but most of those programmes were aimed only at professionals, such as doctors or nurses. Were there any health education programmes for the general public?

57. On the subject of housing, he found it difficult to understand the tables given in the written replies to question 33 of the list of issues. In particular, he would like to know what was meant by the expression "housing units put into use" and would welcome clarification of the figures provided.

58. Ms. JIMÉNEZ BUTRAGUEÑO noted with concern that older workers suffered more from unemployment and asked whether they were not the victims of age-related discrimination, for example, in cases where enterprises preferred to recruit young people because they were cheaper. She had also understood that the Bulgarian Government intended to raise the age of retirement, which would make the situation of older workers worse still. Paragraph 20.1 of the written replies mentioned a pre-retirement unemployment social pension: what was its

value in absolute terms and as a proportion of the minimum wage and what was the age of eligibility?

59. The reply to question 28 of the list of issues on the scale of the phenomenon of violence against women and the methods used to combat it was not very detailed. It would be interesting to have more information, both on the scale of the phenomenon and on the measures taken.

60. Mr. AHMED said that it was important to consider carefully the effects of economic policy on the exercise of economic, social and cultural rights. In that connection, he cited information from different sources. According to the UNDP Human Development report 1997, large sections of the Bulgarian population were living below the poverty line, however the latter was defined. The 1998 annual report of the Committee on the Elimination of discrimination against Women stated that the Committee was particularly struck by the huge proportion of people living below the poverty line in Bulgaria (some 80 per cent, according to the delegation). Another source (Eastern Europe, 1996) said that more than one-third of households had been suffering from malnutrition in 1995, even though they spent 70 per cent of their income on food.

61. Concerning the right to housing, the UNDP Human Development report 1997 stated that, in 1992, almost half of the population of Bulgaria was living in poor housing conditions. Regarding health, one non-governmental organization's report said that Sofia's largest maternity hospital was suffering serious staff and medicine shortages. Under the old system, medical care, including maternity care, had been free; now women had to pay a considerable sum, in relation to the average salary, for maternity care. To receive good care, it was necessary to bribe doctors. Whereas, in the past, women had received their pay in full for two years after giving birth, they now received it for only five months. A female doctor in the association of University Women said that the situation of single mothers was worse still and that one-third of children were born outside wedlock. All physical and mental health services had deteriorated and a large number of hospitals and medical centres had been forced to close or cut capacity.

62. In such circumstances, the basic question was whether the Bulgarian Government could find a middle course, a balance, between pursuing economic reform, on the one hand, and respecting economic, social and cultural rights, on the other. He would be grateful if the Bulgarian delegation would pass on his concerns to its Government, for it was essential that the latter should consider the consequences of restructuring on human rights.

63. Mr. WIMER said that he would like more detail about the housing situation in Bulgaria. In particular, he would like to know what directions Government policy was taking in response to the new economic situation, with particular regard to the fact that the preceding political system had carried out a social housing policy.

64. Mr. DRAGANOV (Bulgaria) said that his delegation would reply in detail at the next meeting to all of the questions asked and that the secretariat would be provided with a document on the integration programmes for Roma carried out in Bulgaria. Noting that most of the questions asked were of a social, political and even philosophical nature, he emphasized that ensuring economic, social and cultural rights was expensive and was inevitably subject to budgetary

constraints. However, the Bulgarian Government, or rather the State or the country as a whole, for not everything was the responsibility of the Government, was committed to reconciling reforms with rights. In the health sphere, the transition from centralized State system to private insurance could not happen overnight and was an expensive process. Assistance from the international financial institutions would be welcome. Health care would remain free until the private insurance system had entered into force. The quality of care was not always what it should be, but the authorities were attempting to improve the situation by means of programmes, with assistance from charitable associations, non-governmental organizations and international financial institutions. The housing situation was changing as well and it was interesting to note that the number of homeowners in Bulgaria was relatively high.

65. Ms. SREDKOVA (Bulgaria) said that she took issue with some of the information cited by members of the Committee on the basis of non-governmental organization reports. She was not familiar with the "alternative" report mentioned by Mr. Riedel and others, and had no idea on what basis it had been drawn up or what it contained. She could certainly study it before the next meeting, but was not sure that that was the correct way in which to proceed. whatever the case, she strongly refuted the claim that mothers had formerly been paid in full for two years after giving birth, whereas now they were paid only for five months. Bulgarian women had never been paid in full for two years after giving birth, and neither indeed had women in other European countries. Under the Bulgarian Labour Code, the total length of maternity leave granted to women depended on how many children they had already: they received 120 days for the first child and 150 for the second. Pre-natal leave represented 45 of the total 120 days. Women could extend their maternity leave by taking child-rearing leave until the child was two years old; during that time, they were entitled to a social security benefit equal in value to the minimum wage. Hence, the situation of women had clearly not become worse in terms of maternity and child-rearing allowances. Moreover, while, until 1992, only working women had been entitled to the maternity allowance, from that year onwards, women with a different status, such as the self-employed, had also been able to claim it.

66. Mr. RIEDEL said he had thought that the Bulgarian delegation was familiar with the alternative report produced by the non-governmental organization and, since that was not the case, he did not expect the Bulgarian delegation to give detailed replies to all of the points raised. However, such reports were useful because of the information they provided. The Committee referred to them not in order to accuse the country's authorities, but in order to give constructive fodder to the dialogue with the delegations.

The meeting rose at 5.55 p.m.